IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3272 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAKWANA RAMESHBHAI SAVJIBHAI DEPUTY SARPANCH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3272 of 2002

MR SHAKTISINH GOHIL for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED BY DS for Respondents No. 2-3

UNSERVED-REFUSED (N) for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/03/2002

ORAL JUDGEMENT

Although controversy about a no-confidence motion

against the Sarpanch of a Gram Panchayat may appear to be too small to invite the wrath of this Court, the facts of this case and particularly the manner in which the Joint Secretary to the State Government in the Panchayat Department has passed the order dated 20th March, 2002 clearly indicate the length to which the statutory authorities can go in flouting the mandatory provisions of an Act of the Legislature and in circumventing the orders of this Court.

2. The petitioner is the Deputy Sarpanch of Fariyadka Gram Panchayat. Respondent No.4 was the Sarpanch of the said Gram Panchayat. On 20th November, 2001, four elected members of the Gram Panchayat, including the petitioner herein, moved a motion of no-confidence against respondent No.4. Hence the Taluka Development Officer instructed respondent No.4 to convene a meeting of Gram Panchayat for considering the decision of the no-confidence motion. Accordingly, on 4th December, 2001, the meeting of the Gram Panchayat was held for considering the aforesaid motion. There is no dispute about the fact that at the said meeting, six members including respondent No.4 and the petitioner were present and out of those six members, four members of the Gram Panchayat (including the petitioner) supported the motion of no-confidence against respondent No.4 and that only two members (including respondent No.4 herein) opposed the motion. By virtue of the provisions of Sec. 56(2) of the Gujarat Panchayats Act, 1993 (the Act for brevity), Respondent No.4 was deemed to have ceased to be the Sarpanch. In view of the above, the Taluka Development Officer passed the order dated 10th December, 2001 (Annexure B) declaring that the motion of no-confidence having been passed on 4th December, 2001, respondent No.4 was required to handover the charge of the Panchayat to the present petitioner, who is the Deputy Sarpanch. Respondent No.4 filed a revision application under Section 259 of the Act before the State Government challenging the aforesaid resolution dated 4th December, 2001 on the same day i.e. on 10th December, 2001. The Joint Secretary in the Panchayat Department granted ex-parte ad-interim stay of operation of the said resolution dated 4-12-2001 of the Gram Panchayat and fixed the hearing on 27-12-2001. The ad-interim stay was granted till 27-12-2001. The petitioner remained present at hearing of the aforesaid revision before the Joint Secretary, but the hearing was adjourned to 16-1-2002 and thereafter to 24-1-2002 and again to 12-2-2002, 22-2-2002 and thereafter to 15-3-2002. The petitioner filed this petition on 8-3-2002, pointing out that the petitioner was keen to take over as Sarpanch in view of the

aforesaid democratic process as enshrined in the Act and the petitioner, therefore, went on requesting the authority to hear and decide the revision application or at least to vacate the ex-parte stay, but to no avail. The petitioner also pointed out that respondent No.4 is attached with the ruling party in the State Government and with the help of the local M.L.A., respondent No.4 managed to see since 10-12-2001 that she was not required to handover the charge to the petitioner, although respondent No.4 had ceased to hold the office of Sarpanch from 7-3-2002 on account of the provisions of Section 56(2) of the Gujarat Panchayat Act. It was specifically mentioned in the memo of the petition that respondent No.1 State Government is not deciding the revision application and is delaying the matter, just to see that the budget of the Gram Panchayat is not passed till 31-3-2002, so that on that ground the Gram Panchayat can be suspended and in case to avoid that situation the members of the Gram Panchayat are required to pass the budget, then it can be said that the Sarpanch is enjoying majority. Sec. 56(2) of the Act reads as under:-

> "(2) Where in the case of the Sarpanch or, as the case may be, the Upa-Sarpanch, the motion is carried by a majority of not less than two-thirds of the total number of the members of the panchayat, the Sarpannch or, as the case may be, the Upa-Sarpanch, shall cease to hold office after a period of three days from the date on which the motion is carried unless he has resigned and the resignation has become effective earlier, and thereupon the office held by him shall be deemed to have become vacant."

3. At the preliminary hearing of this petition on 8-3-2001, the learned Counsel for the petitioner had contended that apart from the fact that respondent No.4 ceased to hold the office of Sarpanch upon expiry of the period of three days from the date of passing of the no-confidence motion on 4-12-2001, the controversy raised by respondent No.4 in the revision application before the Government was already decided by the Division Bench of this Court in the case of Manubhai F Patel vs. State of Gujarat, 2000(1) GLH 423. The Court was, prima facie, satisfied that there was considerable substance in the submission of the learned Counsel for the petitioner that when six members of the Gram Panchayat were present and voted at the meeting specifically convened for considering the no-confidence motion and that out of them, four members had voted in favour of the no-confidence motion against respondent No.4 and only two

members opposed the motion, the requirement of Section 56(2) was satisfied in as much as two-third of the total members of the Panchayat present at the meeting had supported the motion for no-confidence and, therefore, the motion was passed.

However, since the revision application was pending before the State Government and was scheduled to be heard on the next day i.e. on 15-3-2002, the Court restrained itself and passed the following order:

"Mr.Gohil, learned counsel for the petitioner places reliance on the principles laid down by this Court in para 12 of the judgement of a Division Bench of this Court in Manubhai F Patel vs. State of Gujarat, 2000 (1) GLH 423 laying down that the expression "total number of members of the Panchayat" appearing in Section 56(2) of the Gujarat Panchayats Act, 1993 cannot be construed to mean "whole of members of the Panchayat". The number of vacancies of members of the Panchayat which are not filled up, cannot be taken into consideration while interpreting the expression "total number of members of the Panchayat" occurring in Section 56(2) of the Act. In other words, the Division Bench has interpreted the aforesaid expression "total number of members of the Panchayat" as the total number of members of the Panchayat present and voting.

The learned counsel further points out that even respondent No.4 had submitted in her revision application that out of six members present and voting, four members supported the motion of no confidence and two members voted against the motion of no confidence as stated in the revision application.

In view of the above submissions, Notice for final disposal returnable on 22.3.2002. In the meantime, it is directed that the revisional authority, respondent No.1 herein, shall hear and decide the revision application filed by respondent No.4 against the resolution dated 4.12.2001 of Fariyadka Gram Panchayat in Taluka & District Bhavnagar tomorrow which is stated to be the date of bearing. For any reason, if the revision application is not heard and decided by 20.3.2002, the ad-interim stay granted by the revisional authority shall not operate beyond 22.3.2002.

Direct Service is permitted today."

5. When the petition is called out for final disposal, Mr.Sen, learned AGP for respondent No.1 states

that he has received a copy of the order dated 20-3-2002 passed by the State Government in the Panchayat Department, disposing of the application under Section 259, deciding not to entertain the application under Section 259 of the Act on the ground that respondent No.4 has a remedy available to her under Section 242 of the Act for preferring an appeal before the District Panchayat. By the said order, the ex-parte ad-interim stay dated 4-12-2001 has already been vacated. The learned AGP seeks leave to place the copy of the aforesaid order. A copy of the order is also served to the learned Counsel for the petitioner.

6. The affidavit dated 20-3-2002 of the petitioner states that while respondent Nos.1 to 3 (i.e. the authorities) accepted the notice of this Court on 15-3-2002, respondent No.4 refused to accept the notice in presence of the Talati on 16-3-2002.

7. Mr.Gohil, learned Counsel for the petitioner states that he as well as his client have been kept in the dark about the said order. Inspite of making enquiries on 20th and 21st March, 2002, the petitioner as well as he himself were not given any clear answer about the outcome of the appeal or the stay application and they were merely given a vague reply that the order would be communicated to them by post. Mr.Gohil also makes a grievance that even on 15th March, 2002, the Joint Secretary declined to hear the revision on the ground that the High Court had granted time upto 20th March, 2002.

Mr.Gohil further reiterates that the strategy now adopted is to see that respondent No.4 can go in appeal under Section 242 of the Act before the District Panchayat and obtain an ad-interim stay, which would result into non-passing of the budget till 31-3-2002 and then consequential suspension of the Panchayat under Section 116(4) of the Act and in order to avoid that situation, the members of the Panchayat may be coerced to consent to passing of the budget, which can then be treated as respondent No.4 enjoying the majority support.

8. Looking to the manner in which the revisional authority went on delaying the bi-parte hearing, the Court finds considerable substance in the submissions being made by the learned Counsel for the petitioner. The Joint Secretary had granted ex-parte ad-interim stay on 10th December, 2001 under which respondent No.4, (who had already ceased to be Sarpanch on 8th December, 2002

on account of the motion of no-confidence having been passed by the two-thirds of the total number of the members of the Gram Panchayat present and voting the motion of no-confidence against respondent No.4 on 4-12-2002) continued to work as Sarpanch. Inspite of the fact that the petitioner was insisting all along to hear and decide the revision filed under Section 259 of the Act or to vacate the ex-parte ad-interim stay, the revisional authority of the State Government did not hear and decide the matter and went on extending the ex-parte ad-interim stay. On 14-3-2002 itself this Court could have granted ex-parte stay of the stay order dated 10-12-2001 granted by the Joint Secretary. However, out of reference to a statutory authority, the Court merely directed the authority to hear and decide the revision application on the next date of hearing i.e. 15-3-2002 and in any case not to extend the stay beyond 22-3-2002. Having realised that on merits it could have done nothing in view of the decision of the Division Bench in Manubhai F. Patel Vs. State of Gujarat (Supra) and having realised that the ex-parte stay granted in favour of the respondent No.4, would have to be vacated, the revisional authority has found out a convenient excuse of not deciding the matter on merits by requiring respondent No.4 to file an appeal before the District Panchayat. It is not possible to believe that the Joint Secretary to the State Government in the Panchayat Department was for all these three months blissfully oblivious of the provisions of Section 242 of the Gujarat Panchayats Act, 1993 providing for an appeal to the District Panchayat against a resolution of a gram panchayat. This Court will not countenance the approach of the respondent authorities in circumventing the binding decisions and orders of this Court. It is the bounden duty of all the authorities under the Gujarat Panchayats Act including the State Government to ensure that the administration of he Panchayats is carried on in accordance with the provisions of the said Act as interpreted by the Courts.

9. In view of the above discussion, it is directed that in view of the provisions of Section 56(2) of the Gujarat Panchayats Act, 1993 and the decision of this Court in Manubhai F Patel vs State of Gujarat, 2000(1) GLH, 423, respondent No.3 Taluka Development Officer, Bhavnagar shall treat the office of the Sarpanch of the Fariyadka Gram Panchayat as having become vacant on 8th December, 2001 and shall permit Deputy Sarpanch of the said Gram Panchayat to take over additional charge of the office of Sarpanch immediately, notwithstanding any order which may be or may have been passed by the District Panchayat or its appeal committee on or after 20-3-2002.

The Taluka Development Officer shall also permit the petitioner to hold a meeting of the gram panchayat to consider the budget proposal on 30-3-2002.

10. Rule is made absolute to the aforesaid extent.

The next three days being public holidays, direct service of this Judgement shall be given by the Registry on 26-3-2002.

22-3-2002 (M.S. Shah, J.)

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